SENATE BILL 1323
By Johnson

HOUSE BILL 1976

By Lundberg

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 26, relative to liability of skilled nursing facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 26, is amended by adding the following as a new part:

29-26-301.

(a) As used in this part, unless the context otherwise requires:

(1) "Economic damages" means objectively-verifiable monetary losses, including but not limited to the costs of reasonable and necessary medical care, rehabilitation services, custodial care, funeral expenses, and any loss of earned income;

(2) “Health care related services” means any care, treatment, service, or procedure to maintain, diagnose, treat, or otherwise affect a patient’s physical, mental, or psychosocial condition, including, but not limited to:

(A) Any service or activity provided pursuant to the patient’s plan of care, any physician’s order, or any regulatory requirement regarding care to be provided; or

(B) Any service or activity where the manner of performance is based on the medical condition of the patient and is performed by a person who has been trained or instructed on the performance of such service or activity and the person’s performance of such service or activity is within the scope of the person’s employment.

(3) "Non-economic damages" means subjective nonmonetary losses of any nature that result from an injury or death, including but not limited to pain, suffering, mental anguish, loss of enjoyment of life, attention, protection, advice, guidance, counsel, inconvenience, disability, disfigurement, emotional distress, loss of society and companionship, injury to reputation, loss of consortium, destruction of the parent-child relationship, and all other nonpecuniary and intangible loses of any kind or nature;

(4) "Skilled nursing facility" means any nursing home licensed under title 68, chapter 11, and its employees, owners, managers, licensees, affiliates, and any person or entity participating in or exercising control over the care rendered at the skilled nursing facility, including the medical director when acting in the capacity of a medical director; and

(5) "Skilled nursing facility liability action" means any civil action in any forum for any remedy against a skilled nursing facility in which the claimant alleges any injury or death related to the provision of or failure to provide health care related services.

29-26-302.

(a) Any skilled nursing facility liability action, regardless of any other claims, causes of action or theories of liability alleged in the complaint, shall be brought solely and exclusively as a medical malpractice action pursuant to §§ 29-26-115 through 29-26-122, specifically including but not limited to the claimant's burden of proof requirements at § 29-26-115.

(b) All injuries or occurrences, or both injuries and occurrences, that are or could have been asserted in a skilled nursing facility liability action shall constitute one (1) skilled nursing facility liability action for purposes of this part regardless of whether the

action or actions are based on a single act or omission or a series of acts or omissions that allegedly caused the injury, injuries, death, or deaths.

29-26-303.

(a) There shall be no limit on the amount of economic damages that may be recovered in a skilled nursing facility liability action.

(b) The maximum amount of non-economic damages recoverable in any skilled nursing facility liability action is two hundred fifty thousand dollars ($250,000). In the case of a jury trial, the jury shall not be told of the limit on non-economic damages recoverable. The judge shall adjust the final award in compliance with this section. The limit of this section shall be adjusted for inflation as of January 1, 2014, and at three-year intervals thereafter. Inflation shall be determined in accordance with the consumer price index for all urban consumers for the previous year as published by the bureau of labor statistics of the United States department of labor.

(c) In any skilled nursing facility liability action, punitive damages shall be permitted only if the claimant proves by clear and convincing evidence that the defendant's conduct demonstrated actual malice toward the claimant. A person acts with actual malice when the person's act is motivated by ill will, hatred, or personal spite.

(d) For purposes of this section, the maximum amount of punitive damages recoverable in a skilled nursing facility liability action shall be limited to five hundred thousand dollars ($500,000). In the case of a jury trial, the jury shall not be told of the limit on punitive damages recoverable. The judge shall adjust the final award in compliance with this section.

SECTION 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of

the act which can be given effect without the invalid provisions or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it, and it shall apply to any skilled nursing facility liability action arising on and after July 1, 2011.